THE HON'BLE SRI JUSTICE P. DURGA PRASAD

APPEAL SUIT NO.2620 of 1993

JUDGMENT:

This appeal under Section 96 of C.P.C. is directed against the judgment and decree passed in O.S.No.466 of 1983 by the Principal Subordinate Judge at Ranga Reddy District on 13.08.1991.

The appellants herein are the defendants in the said suit and the respondents herein are the plaintiffs (the parties are being referred as mentioned in the suit).

The brief averments of the plaint are that the 1st plaintiff is the daughter and the 2nd plaintiff, is the widow of D.R.Muthyaloo. Defendant No.1 is the uncle of the 1st plaintiff, being the 1st plaintiff's father's brother and the defendant No.2 is the cousin of the plaintiff No.1, being the son of 1st plaintiff's father's brother, late D.R.Narsimloo. Late D.R.Muthyaloo was the E.M.E. Supervisor, Technical Grade-I. He was the absolute owner and in possession and enjoyment of the house No.29/78 situated at new Mirjalguda, Ranga Reddy District, having purchased the same from out of his own earnings under registered sale deed dt.10.12.1965 for a consideration of Rs.5,000/-. The father of the plaintiff allowed the defendants 1 and 2 to reside in the different portions of the suit house. The father of the plaintiff No.1, late D.R.Muthyaloo and defendants 1 and 2 never lived jointly. They earned for their livelihood individually and lived separately with their respective wives and children and having separate mess. The father of the plaintiff No.1 late D.R.Muthyaloo died on 19.04.1973 due to illness at Gandhi Hospital, Secunderabad. The father of the plaintiff No.1 resided in the suit house as an absolute owner till his death. The funeral rights, etc. were performed by the sole plaintiff No.1. Plaintiff No.2 is provided with the pension being the widow of the said late D.R.Muthyaloo and it was the wish of Muthyaloo that the entire suit house should go to his only daughter plaintiff No.1 and plaintiff No.2

have right of residence during her lifetime. As such, the 2nd plaintiff is not claiming any right over the suit property. Hence, the 1st plaintiff is claiming as an absolute owner of the entire suit property. The 2nd plaintiff is in occupation of the portion of the suit house after death of late Muthyaloo. The 1st plaintiff was requested by the defendants 1 and 2 to allow them to continue in the portions of the suit property till they find some suitable accommodation. Accordingly, the defendants are licensees in occupation of the portion of the suit schedule property. The defendants on one pretext or the other went on gaining time and kept the plaintiff in false promises and did not vacate the suit house. The plaintiff fed up with the attitude of the defendants 1 and 2, got issued a legal notice on 15.12.1981, revoking the license and called upon them to vacate the suit premises, which was in their respective occupation and deliver peaceful and vacant possession. The defendants have received said notice but gave an evasive false reply without complying with the demand to vacate the premises. The defendants 1 and 2 refused to vacate and deliver the vacant possession of the suit schedule property. Hence, the plaintiff is also entitled for mesne profits at Rs.300/- per month from the date of suit till actual delivery of the property. Hence, the suit for recovery of possession of the suit schedule property.

Both the defendants have filed their written statements. They admitted that late Muthyaloo was an employee as EME Supervisor but they denied that he is the absolute owner and in possession and enjoyment of the suit house. They denied that they were permitted to reside in the suit house by the 1st plaintiff's father Muthyaloo. According to them, all of them lived jointly as a Hindu joint family during the life time of D.R.Muthyaloo. After the death of D.R.Muthyaloo, the joint family consists of defendant No.2, with his younger brother and defendant No.1 and continued even till date. The suit property was not the exclusive and individual property of late D.R.Muthyaloo. It was purchased in the name of Muthyaloo by late D.R.Narsimhulu and defendant No.1 as members of

the Hindu joint family with the funds contributed by all of them but they purchased the same in the name of D.R.Muthyaloo as he was the eldest and kartha among the three brothers. They admitted the death of D.R.Muthyaloo on 19.04.1973 at Gandhi Hospital, Secunderabad. They denied that the funeral rights were performed solely by the plaintiff No.1 and according to them the funeral rights were performed by defendant No.1 as a surviving kartha. They admitted that the plaintiff No.2 is provided with the pension being the widow of late D.R.Muthyaloo with the active help and cooperation of late D.R.Narsimhulu and defendant No.1. They denied about the averment in the plaint that it is the wish of late Muthyaloo that the entire suit house should go to plaintiff No.1 exclusively and 2nd plaintiff shall have only right of residence in the suit house till her death and according to them it is only self-serving statement fabricated for the purpose of this case. They also denied about the plaintiff allowing the defendants 1 and 2 to continue in the suit house till they find suitable accommodation and they agreed to vacate the premises but went on postponing the same on false promise. The allegation that the defendants are in occupation of the suit house as licensees is false. The defendants are in occupation of the suit premises as members of surviving joint Hindu family and each of them having one-third share in the suit schedule property. The plaintiffs having separate 1/6th share in the suit house. The defendants agreed to offer their 1/3rd share in the suit house as the suit schedule property would not be divided by metes and bounds. Since the defendants are in occupation of their respective undivided shares, they are not liable to vacate the said premises or liable to pay the mesne profits. They further pleaded that the suit property was not the exclusive property of Muthyaloo and the plaintiff could not have laid her claim in the suit property till after 10 years of the death of late D.R.Muthyaloo. The plaintiff at no point of time made any claim against the said property and she did not pay any taxes to the suit property at any point of time nor attended to any major or minor repairs to the suit property. On the other hand, the defendants alone have been

paying taxes and maintaining the suit house by attending to minor repairs and periodical colour washing of the premises. The plaintiff No.1 collected her personal belongings, the belongings of her father within three months of his death comprising of clothes, ring, water boiler and sewing machines and trunks and nothing prevented her from claiming the suit schedule property from the defendants. They further pleaded that the suit is bad for misjoinder of parties and there is no cause of action for filing the suit and as they are in the joint possession of the suit, the suit is liable to be dismissed.

On the above pleadings, the following issues have been framed for trial:

1. Whether the plaintiffs are entitled for delivery of vacant possession of the suit premises?
2. Whether the plaintiffs are entitled for the mesne profits as prayed for?
3. To what relief?

Subsequently as per the orders in I.A.No.844 of 1984 dt.09.10.1984, the following additional issue was framed:

Whether the suit property is the joint family property purchased in the name of late D.R.Muthyaloo being eldest member of the family as alleged?

During the course of trial, the plaintiff No.1 examined herself as PW.1 and examined PWs.2 to 4 on her behalf and got marked Exs.A-1 to A-9. The defendant No.1 examined himself as DW.1 and examined DWs.2 to 5 on their behalf and got marked Exs.B-1 to B-23. The trial Court basing on the said oral and documentary evidence held the additional issue against the defendants, issue No.1 in favour of the plaintiffs, issue No.2 in favour of the defendants and finally the suit was decreed in part without costs against the defendants 1 and 2, for possession of the suit house in favour of the 1st plaintiff and directing the defendants to vacate and deliver the vacant and peaceful possession of

the premises in their occupation and directed them to vacate the premises within three months.

Aggrieved by the said judgment and decree, the defendants therein filed the present appeal.

The appellants' counsel has pleaded that the suit schedule property was purchased by the defendant No.1 and father of defendant No.2 i.e. D.R.Narsimhulu with their own earnings and the 1st plaintiff's father D.R.Muthyaloo, being the kartha of the joint family, purchased the said property in his name and they are living jointly as a Hindu joint family. As such, the plaintiffs cannot claim recovery of possession of the suit property and are only entitled for one-third share of the suit schedule property.

The respondents' counsel, on the other hand, has pleaded that the suit schedule property was purchased by the father of the plaintiff No.1 late D.R.Muthyaloo with his own earnings and he permitted the defendants 1 and 2 to reside in the suit schedule premises and they never lived jointly as there is no joint family as alleged by the defendants and since the plaintiff No.1 being the only daughter of late Muthyaloo, she is entitled for delivery of the possession of the said property, which is in the hands of defendants 1 and 2.

Now the point that arises for consideration is whether the suit schedule property is the joint family property or the exclusive property of late D.R.Muthyaloo and whether the plaintiffs are entitled for delivery of vacant possession of suit schedule premises?

POINT:

The plaintiffs are claiming that the suit schedule property is exclusive property of late D.R.Muthyaloo and in support of their contention they relied upon Ex.A-4, the certified copy of the sale deed of the suit schedule property, which was in the name of late D.R.Muthyaloo.

The defendants, on the other hand, pleaded that the suit schedule property is a joint family property purchased by the joint contribution of all the members and the plaintiffs' father, being the eldest member and kartha of the family, it was purchased in his name and as such they are living in the suit premises as shareholders and they are not liable to vacate from the suit premises. Since the defendants are asserting that the suit schedule property is joint family property, the burden is on them to establish that the suit schedule property was purchased by the joint family and kept in the name of late D.R.Muthyaloo as there is no presumption that the joint family possessed joint family properties. In order to establish the property as the joint family property, there must be a joint family nucleus for purchasing the said property. Defendant No.1 as DW.1 has stated that his father got four sons and two daughters, they are D.R.Muthyaloo, D.R.Narsimhulu, D.R.Shankar Rao and himself and late Manikyamma and D.S.Sarojana. The brothers and sisters constituted a joint family members and used to stay at Picket in the beginning and during that time the marriages of D.R.Muthyaloo, Narsimhulu and Manikyamma were performed from their joint family earnings. After the death of wife of late D.R.Muthyaloo, they left Picket in the year 1949 and residing at Mirjalaguda Mosque jointly. After Second World War, his elder brother Muthyaloo returned to India, left the service of railways and joined in service of Ordinance Factory at Kanpur and at the time of death of his sister-in-law, he came from Kanpur and attended her funeral and stayed for 10 to 15 days and left for Kanpur. His brother never sent any amount towards the maintenance of the 1st plaintiff but he used to send Rs.80/- to the joint family. According to him, his brother married another woman by name Amruthamma after death of his first wife. Himself, his late brother D.R.Narsimhulu took the suit house on lease originally from one G.Venkayya in the year 1953 and the rent was Rs.80/- per month. His father used to pay rents through himself and his second brother D.R.Narsimhulu. In the year 1955, the owner intended to dispose of the suit house and his brother late D.R.Narsimhulu agreed to purchase it for

Rs.7,500/- in easy installments of two years. In the year 1957, they paid Rs.3,000/- and the balance of the amount agreed to be paid in installments. Ex.B-1 is the accounts book maintained by them showing payment of installments from time to time. They got educated the 1st plaintiff upto matriculation thereafter her mental condition was not sound, she got admitted in the mental hospital, Erragadda. D.R.Narsimbulu brought the marriage alliance and her marriage was performed in the year 1964. The 1st plaintiff got a teacher job with his assistance. They used to pay the house tax. Exs.B-2 to B-19 are the house tax receipts paid by the defendant No.1 and father of defendant No.2. The electricity bills are in the name of original owner and Ex.B-20 is the electricity card. He took connection for water after the death of his brother in the year 1973-74. He purchased the suit house before his brother's retirement. Since Muthyaloo is the eldest member and kartha of the family, he purchased the suit house in his name. After his retirement, Muthyaloo brought 2nd plaintiff. His marriage was performed in the year 1961 and Ex.B-21 is the wedding card, which was printed in the name of late Muthyalarao. Late Muthyalarao also filed a criminal complaint regard to the ancestral property against the occupants in the P.S., Balanagar, which is now Quthbullapur. Ex.B-22 is the true copy of the said complaint. Police took some action on the said complaint and later they addressed a letter Ex.B-23 informing that the matter is of a civil nature. D.R.Muthyaloo was admitted in the Gandhi Hospital in the year 1973 and after his death his funeral rites were performed by his elder son Ravi Kumar. The 1st plaintiff did not spend for the said ceremony. In the cross-examination he admitted that the house purchased by Shankar Rao is not a joint family property. He denied the suggestion that the suit property was purchased by late Muthyaloo with his own income. He admitted that he purchased one plot under original sale deed of Ex.A-4 in his name and his brother Narsimhulu also purchased another plot in his name under original of Ex.A-1. He admitted that himself and Narsimhulu were residing in a rented premises at Mirjalaguda Mosque. He admitted

that Muthyaloo used to pay Rs.80/- per month.

The other witnesses examined by the defendants are, DW.2 J.Narsimha, a resident of Mirjalaguda and according to him defendant No.1 and his brother Narsimhulu and PW.1 used to reside in the suit house and defendants 1 and 2 used to manage the property, DW.3 V.G.Venkat has stated that he is the owner of the suit house and intended to sell the said house. Defendant No.1 and his late brother Narsimhulu used to pay rents and at that time Muthyaloo, the father of the 1st plaintiff, was in military service, used to come to the suit house and reside there during his lifetime.

DW.4 is B.Mallesha and according to him, Narsimhulu purchased the suit house and at that time D.R.Muthyaloo was in service. Once in a year, he used to come to the suit house. He used to do repairs to the said house at the instance of Narsimhulu.

DW.5 is the owner of the suit house. According to him he leased out the said premises to Narsimhulu, father of defendant No.2 in 1954 and two or three years thereafter he sold it to them for Rs.7,000/- under the registered sale deed. The defendant No.1 and father of defendant No.2 used to pay the rents at his residence at their instance he got the sale deed executed in the name of their elder brother Muthyaloo but said Muthyaloo never visited him at any time either for payment of rents or for payment of consideration.

On the other hand, the plaintiff examined herself as PW.1 and stated that her father's brother Shankar Rao was working as Circle Inspector of Police and retired from service and he purchased separate house at Rezimental Bazar, Secunderabad. Defendant No.1 also purchased land and father of D-2 also purchased land in the year 1965. In the year 1967, D-1 and father of D-2 purchased plots under Exs.A-1 and A-2. Defendant No.1 was working as a teacher and Narsimhulu was working as Roll Castor in railways and he was getting Rs.60/- or 70/- per

month as salary. Her father was working as EME Supervisor, Grade-I and he was trained in Bavini Training at England in the year 1942 and getting a salary of Rs.700/- per month. Originally he was working in railways thereafter he joined in EME department. Her father purchased the suit house for Rs.5,000/- in December, 1965 and Ex.A-4 is the certified copy of the sale deed. She further stated that she performed the last rites of her father and printed the invitation cards for 10th day ceremony. Her father used to reside in the suit house and her father permitted plaintiff No.2 to reside in the suit house. Defendant No.1 and father of defendant No.2 are permitted to live in the suit house by her father temporarily till they construct their own houses and accordingly her father permitted them to reside in the suit house.

PW.2 is the husband of PW.1 and he supported the evidence of PW.1 in all respects.

PW.3, Yashoda, who is known to both the parties, has also supported the version of PW.1 with regard to late Muthyaloo's earning Rs.700/- to 800/- per month as salary and about the purchasing of the suit house at Rs.5,000/- and that Shankar Rao, who is an employee in police department, has purchased the property separately and when the suit property was purchased D-1 was working as a teacher and earning Rs.60/- to 70/- and father of D-2 was a roll castor in a press and getting Rs.80/- per month as salary.

PW.4, A.Narayana, who is resident of Mirjalaguda, has stated about the defendants and plaintiffs residing in the suit schedule premises separate in different portions and having different mess.

Thus, there is no dispute with regard to the purchase of suit schedule property in the name of late D.R.Muthyaloo under Ex.A-4. According to the defendants, they are residing in the said premises originally as tenants and subsequently D1 and father of D2 have purchased the suit property for Rs.7,000/- and paid Rs.3,000/- and

balance in monthly installments and as the plaintiff No.1's father, being the eldest member in the family, they kept the said property in the name of D.R.Muthyaloo. As per the evidence of PW.1 and admissions made by D1, it is evident that Shankar Rao, who is one of the brothers of the plaintiff No.1's father, has purchased the property in his own name separately and D1 and father of D2 also purchased the land and plots in their respective names. If really they are living in joint family, all the properties should have been purchased in the name of joint family and as admitted by them D.R.Muthyaloo, being the kartha of the family, he should have purchased the property in his name and they are not claiming any rights over the said properties purchased in their individual names but they are claiming suit property purchased in the name of D.R.Muthyaloo. Admittedly, D.R. Muthyaloo was working in military service at the time of purchase of the property and as per the evidence of PWs.1 to 3, it is evident that the said Muthyaloo was working in EME as Supervisor, Grade-I and earning Rs.700/- to 800/- per month as a salary and whereas the 1st defendant is working as a teacher and getting a salary of Rs.60/- to 70/- per month and D2's father was working as roll castor in railways and getting Rs.80/- per month. Apart from the oral evidence of DW.1, there is no other evidence to show that they lived as a joint family and whether there is any joint nucleus for the purchase of the suit schedule property and the defendants have relied upon Ex.B-1 said to be the accounts maintained by them for payment of installments for the purchase of suit schedule property. Ex.B-1 is the accounts maintained on loose paper and nobody has signed on the said document and it does not disclose about the payment of the installments to the owner of the said house and a perusal of the said document shows that it was prepared recently. Thus, the trial Court has rightly disbelieved the maintenance of Ex.B-1 towards the installments paid for purchase of suit schedule property. Moreover, DW.1 could not say what was the contribution made by D1 and D2's father for purchase of said property and he only stated Rs.3,000/- was paid in the year 1967 and subsequently paid the balance in installments. Moreover, DW.1 admitted

about the taking of the premises on lease prior to purchase of the said premises on a monthly rent of Rs.80/- and according to DW.1 himself and D2's father used to pay the said rent but he admitted that the father of plaintiff No.1 D.R.Muthyaloo used to send Rs.80/- per month to them and according to them it is the amount paid towards the maintenance of the joint family. The admission made by DW.1 clearly shows that the said amount was sent by the father of the 1st plaintiff towards the rent for the suit premises. When D.R.Muthyaloo is getting a salary of Rs.700/- to 800/- per month and whereas D1 is getting Rs.60/- to 70/- per month by working as a teacher and D2's father was working as a roll castor in railways and earning Rs.80/- per month, it cannot be believed that they have paid the entire consideration of Rs.7,000/- as claimed by them to the owner for purchase of said property. Moreover, when D1 and D2's father and another brother Shankar Rao have purchased the properties in their individual names, there is no explanation for their contention that the suit schedule property alone was kept in the name of D.R.Muthyaloo when it was not purchased by him with his earnings. Admittedly, defendant No.1 and father of defendant No.2 were residing in suit schedule property along with plaintiff No.1's father and as he is working in different places and he used to come and stay in the said house and as on the date of his death he was residing in the said house. The defendants could not point out the contribution made by them for the purchase of the suit schedule property or whether they constituted any joint family as on the date of purchase of said property. As per the evidence available on record, it is an admitted fact that the defendant No.1 and father of defendant No.2 were living in the said house by having separate mess in their respective portions.

The appellants' counsel has pleaded that the defendant No.1 and father of defendant No.2 used to maintain the house and they are paying the taxes for the schedule premises and the 1st plaintiff has not produced any tax receipts or spent any amount for the maintenance of the said

building.

In support of their contention, they have filed Exs.B-2 to B-19 house tax receipts and examined DW.4, who said to have attended for the repairs of the said house at the instance of Narsimhulu. Since the defendant No.1 and father of defendant No.2 were residing in the said house, they might have paid the taxes for the entire suit house and attended to the repair works but that does not confer any title over the said property when they could not establish that they contributed any amount for purchase of the said property. Therefore, from the above evidence, the defendants have failed to establish that there is a joint family and the suit schedule property was purchased with the joint family funds. Since there is no nucleus for purchase of the suit schedule property, it cannot be said that it is the joint family property and purchased in the name of late D.R.Muthyaloo. On the other hand, it is evident that D.R.Muthyaloo is drawing a salary of Rs.700/- to 800/- per month as on the date of said purchase and whereas D1 and father of D2 are getting a salary of a meagre amount of Rs.60/- to 70/-. Therefore, the said circumstance also clearly establishes that the said property was purchased by the earnings of D.R.Muthyaloo. It may be true that defendant No.1 and father of defendant No.2, being residing in Mirzalaguda, they might have assisted D.R.Muthyaloo for purchase of the said property with the amount sent by him. Therefore, the trial Court has rightly held that the suit schedule property is not the joint family property and it is the self-acquired property of D.R.Muthyaloo.

According to PW.1, she is the only daughter of D.R.Muthyaloo and 2nd plaintiff is her step-mother and as per wish of her father, the entire property should go to her and the plaintiff No.2 has got a right of residence in the said property till her death and the plaintiff No.2 is not disputing or claiming any right over the said property and according to PW.1, defendant No.1 and father of defendant No.2 were permitted to live in the suit schedule premises by her late father D.R.Muthyaloo and in

view of the above finding, since the said property is exclusive property, the residence of defendant No.1 and father of defendant No.2 in the said premises is that of licensees of the original owner. Therefore, they are liable to be evicted from the schedule premises after cancellation of the license. PW.1 has issued a notice under Ex.A-6 demanding for delivery of possession by cancellation of license granted to them by her father. Therefore, the 1st plaintiff is entitled for recovery of the vacant possession of the schedule premises, as rightly ordered by the trial Court. Thus, the trial Court has rightly decreed the suit in favour of the plaintiffs and the same does not warrant any interference by this Court in this appeal.

In the result, the Appeal Suit is dismissed with costs.

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JUSTICE P. DURGA PRASAD

Date: 17-08-2012
MR

THE HON'BLE SRI JUSTICE P. DURGA PRASAD

APPEAL SUIT NO.2620 of 1993

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Date: 17-08-2012

MR